

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD L. BASKETT,

Petitioner,

v.

KEN QUINN,

Respondent.

CASE NO. C06-1525-JLR-MJB

REPORT AND
RECOMMENDATION

I. INTRODUCTION AND BACKGROUND

Petitioner is a state prisoner proceeding *pro se* in this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In April 2003, Petitioner was convicted on his guilty plea of first degree child molestation. (Dkt. #12, Ex. 1.) The trial court imposed a Special Sexual Offender Sentencing Alternative (SSOSA) sentence of 60 months, suspended on condition that Petitioner serve 90 days in confinement and enter into, make reasonable progress, and successfully complete sex offender treatment. (*Id.*) On April 8, 2005, the court held a revocation hearing after Petitioner was terminated from his treatment program, and Petitioner's SSOSA sentence was revoked. (Dkt. #12, Ex. 1 at 2-3.)

On November 6, 2006, Petitioner's § 2254 habeas petition was filed in this court. (Dkt. #6.) Respondent filed a motion to dismiss Petitioner's habeas petition as

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1 unexhausted or, in the alternative, a motion to stay the petition until exhaustion is
2 completed. (Dkt. #12.) After careful consideration of the entire record, I conclude that
3 Respondent's motion to dismiss should be GRANTED.

4 II DISCUSSION

5 It is well established that state remedies must first be exhausted on all issues
6 raised in a federal habeas corpus petition. *Rose v. Lundy*, 455 U.S. 509 (1982); 28
7 U.S.C. § 2254(b). Exhaustion must be shown either by providing the highest state court
8 with the opportunity to rule on the merits of the claim or by showing that no state
9 remedy remains available. *See Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996)
10 (citations omitted). The exhaustion requirement is a matter of comity, intended to afford
11 the state courts the "first opportunity to remedy a constitutional violation." *Sweet v.*
12 *Cupp*, 640 F.2d 233, 236 (9th Cir. 1981). A federal habeas petitioner must provide the
13 state courts with a fair opportunity to apply controlling legal principles to the facts
14 bearing on his constitutional claims. *Picard v. Connor*, 404 U.S. 270 (1971); *Anderson*
15 *v. Harless*, 459 U.S. 4 (1982).

16 In the motion to dismiss, Respondent argues that Petitioner has not completed
17 exhaustion of his claims in state court because his direct appeal is still pending at the
18 Washington Supreme Court and Petitioner has also filed a pending petition in the
19 sentencing court. The exhibits submitted by Respondent in support of this argument
20 include the state supreme court's docket for Petitioner's direct appeal, which reflects that
21 as of November 7, 2006, his petition for discretionary review is pending and set for
22 consideration on July 10, 2007. (Dkt. #12 at Ex. 3.) To date, Petitioner has presented
23 no argument or evidence indicating that his direct appeal is not still pending in the state
24 supreme court. Accordingly, because Petitioner has failed to exhaust his state court

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1 remedies, the claims in his § 2254 habeas petition are not eligible for federal habeas
2 review.

3 III. CONCLUSION

4 For the reasons set forth above, this Court recommends that Petitioner's § 2254
5 habeas petition be DISMISSED without prejudice. A proposed order accompanies this
6 Report and Recommendation.

7 DATED this 23rd day of January, 2007.

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9 MONICA J. BENTON
10 United States Magistrate Judge
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